



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.06.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.S. SUNDAR

C.R.P (NPD) (MD).No.247 of 2011

Ameerjan

.. Petitioner/Plaintiff

Vs.

1.M.Thangaraj
2.The Chief Executive Officer,
Tamilnadu Wakf Board,
No.1, Jafar Sirang Street,
George Town,
Chennai - 1.

.. Respondents/Defendants

Prayer: Civil Revision Petition filed under Section 83 of the Wakf Act, 1995, against the Judgment and decree, dated 14.06.2010, passed in O.S.No.31 of 2007 on the file of the Wakf Tribunal (Principal Sub Judge), Tirunelveli.

For Petitioners : Mr.G.Venugopal

For Respondent : Mr.S.Kumar for R1
No Appearance for R2

ORDER

This civil revision petition is directed against the order passed in the suit in O.S.No.31 of 2007 on the file of the Principal Sub Court, Tirunelveli (Wakf Tribunal).

2.The revision petitioner filed the suit before the Wakf Tribunal for declaration that the suit property belongs to the plaintiff Wakf and to direct the first defendant to vacate and hand over the vacant possession of the suit property. The suit is also for permanent injunction restraining the first defendant from putting up any construction in the suit property. The suit property is measuring an extend of 2 cents within the four boundaries mentioned in the description of property. There is no reference to any Town survey number or old survey number.

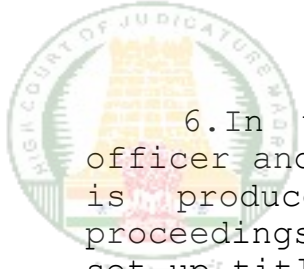
3.The case of the revision petitioner is that the suit property belonged to the plaintiff Thaika (Wakf) and that patta for the suit property also stands in the name of plaintiff Thaika. It is the definite case of the revision petitioner that the first defendant



has unlawfully encroached into the suit property by putting up construction.

4. The suit was opposed by the first defendant by denying the averments made in the plaint. Though the respondent denied every allegations made in the plaint, he simply put the plaintiff to prove the case. It is also stated that the suit property does not belong to the plaintiff, but belonged to one Pechiammal by virtue of a sale deed, dated 19.05.1976. It was therefore pleaded that the said Pechiammal is a proper and necessary party to the suit. The plaintiff/revision petitioner produced before the Tribunal the order passed by the settlement Tahsildar under Ex.A6, dated 19.09.1967 granting ryotwari patta. Apart from the order passed by the settlement Tahsildar, the plaintiff also filed patta, kist receipts and adangal extract. The Wakf Tribunal ignored the order of settlement Tahsildar which was marked as Ex.A6 on the ground that merely on the basis of settlement providing neither title nor possession can be decided. The Tribunal relied upon the judgment of this Court reported in 1992 (2) L.W. 425 to hold that the question of title has to be decided only by Civil Court and that the order of settlement Tahsildar cannot have precedence over the Judgment of the District Munsif. Relying upon the judgment of this Court, the Wakf Tribunal held that the order of settlement Tahsildar cannot confer title in favour of the plaintiff. The Wakf Tribunal further held that the suit itself is not maintainable before the Tribunal without issuing notice to the second respondent under section 89 of Wakf Act. Stating that the plaintiff has not filed any other document except Ex.A6, the order passed by the settlement officer, the trial court dismissed the suit, since the title of the plaintiff has not been established. Aggrieved by the same, the plaintiff has preferred the civil revision petition.

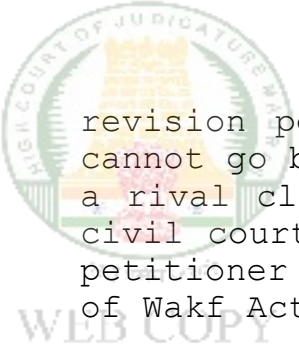
5. This court perused the document Ex.A6. It is an order passed by the settlement Tahsildar, Kovilpatti, dated 19.09.1967. From the order, it reveals that the property including the suit property comprised in to S.No.76/3 has been taken over under Tamilnadu Minor Inam (Abolition and conversion into ryotwari) Act, 1963. With regard to the S.No.76/3, it was observed that the occupant of land is absent and there is no claim. Ryotwari patta was granted in favour of the Wakf under Section 8(2)(1) of the Act. It is well settled that the ryotwari patta granted either under Inam Estate (Abolition and conversion into ryotwari) Act or under Minor Inam Abolition Act is a document by which the government recognizes the pre-existing right of a person to get ryotwari patta. No doubt it is true that such ryotwari patta granted during the settlement does not bind the civil court. In other words, despite finality contemplated under Act 26 of 1948 or under Act 30 of 1963, the civil court is competent to decide the question of title if it is required to be decided irrespective of any decision or the settlement officer under any of the ryotwari settlement.



6. In the present case, as against the order of settlement officer and the patta issued to the revision petitioner, no document is produced by the respondent to discredit the settlement proceedings or the ryotwari patta. Strangely the respondent also set up title in favour of Pechiammal and has filed written statement stating that the suit itself is liable to be dismissed without impleading the real owner of the property namely Pechiammal. When the respondent has no locus standi to dispute the revision petitioner's claim of title, there is no bonafide in the case of respondent in setting up title in favour of Pechiammal. The fourth defendant contend that the said Pechiammal is the owner by virtue of a settlement deed executed by one Muthupattan Chettiar and others. No document is produced to prove the title of predecessors in interest of the said Pechiammal. Once ryotwari patta granted by settlement officer is produced before court, the ryotwari patta can be treated as document of title as it is being given in recognition of the pre-existing right of the ryot to hold possession against the government. Under the Minor Inam Abolition Act (30 of 1963), the property vested with government free of all encumbrances subject to the pre-existing rights of ryots. In the said circumstances, the ryotwari patta granted to a person in recognition of one's pre-existing right is a prima-facie document to establish one's title. A subsequent settlement deed cannot be valid piece of evidence to discredit or ignore the settlement proceedings. In the present case, the order of settlement officer and the patta would certainly establish the title and enjoyment of the revision petitioner as owner. Though the respondent states that one Pechiammal is the owner she has not made any rival claim either before the settlement authorities or before the civil court. Even though the civil court can decide the title independently in a case, where a rival claim is made and the civil court can decide the title irrespective of the decision of the settlement officer for the purpose of granting ryotwari patta, such decision should be based on evidence establishing the absolute ownership and continuous possession by the rival claimant before and after ryotwari settlement.

7. The respondent who is the contesting defendant does not claim title. The respondent does not derive title from the said Pechiammal who according to the respondent is the true owner. In other words, it is not the case of the respondent that he derived any right from the said Pechiammal. Hence, this court is also of the view that the respondent has no locus standi to resist the claim of revision petitioner as owner of ryotwari land ignoring the legal implication of property being taken over under the Minor Inam Abolition act and grant of ryotwari patta in favour of Wakf with regard to the suit property.

8. In the above circumstances, this court is unable to accept the view taken by the Wakf Tribunal rejecting the case of the plaintiff regarding the title. Since there is no other material produced before this court, except the document Ex.A6, it can be presumed that the revenue authorities have recognized only the



revision petitioner to get ryotwari patta. The revenue officials cannot go beyond the order passed by the settlement Tahsildar unless a rival claimant establish his right by getting a declaration from civil court. No relief is claimed against Wakf Board and hence the petitioner cannot be non suited for want of notice under Section 89 of Wakf Act.

9.In the result the judgment and decree dated 14.06.2010 passed in O.S.No.31 of 2007 on the file of the Principal Sub Judge, Tirunelveli, is set aside and this Civil Revision Petition is allowed. The suit in O.S.No.31 of 2007 stands decreed. No costs.

Sd/-

Assistant Registrar (CO)

/ True Copy /

Sub Assistant Registrar(CS-)

TM

To

1.The Principal Sub Judge, Tirunelveli.

2.The Chief Executive Officer,
Tamilnadu Wakf Board,
No.1, Jafar Sirang Street,
George Town, Chennai - 1.

3.The Section Officer, E.R/V.R.Section,
Madurai Bench of Madras High Court,
Madurai(**2 Copies**).

+1 CC to M/s.M.P.SENTHIL, Advocate
(SR-69970[F] dated 20/06/2019)

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19.06.2019

ES/19.07.2019/4P/6C